LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 26 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 615

RUTH A. MOREWITZ, Administratrix of the Estate of George Vokorokos, Deceased
Petitioner—Cross-Respondent

VERSUS

PANAMANIAN SS MATADOR, etc., et als
Respondent—Cross-Petitioner

RESPONDENT'S CROSS-PETITION FOR WRIT OF CERTIORARI

WALTER B. MARTIN, JR.
819 Citizens Bank Bldg.
Norfolk 10, Va.
Proctor for Respondent

TEAGLE & LITTLE, PRINTERS, NORFOLK, VA.

INDEX

	Page
CITATIONS OF OPINIONS BELOW	1
FACTS	2
QUESTION PRESENTED	2
ARGUMENT	3
CONCLUSION	6

CASES CITED

Blanco v. S/S Fenix (E.D. Va. 1961) (Unreported)	5
Page v. United States (CCA 9th) 177 F2d 601	5
Yoffe v. Colman, 23FS 629	5

STATUTES CITED

46 USCA 596	3, 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.....

RUTH A. MOREWITZ, Administratrix of the Estate of George Vokorokos, Deceased
Petitioner—Cross-Respondent

VERSUS

PANAMANIAN SS MATADOR, etc., et als
Respondent—Cross-Petitioner

RESPONDENT'S CROSS-PETITION FOR WRIT OF CERTIORARI

Motor Shipping Corporation of the Seven Seas, owner of the SS MATADOR, files herewith its cross-petition for writ of certiorari.

CITATIONS OF OPINIONS BELOW

The memorandum opinion of the District Court printed in the Appendix to petitioner's petition for writ of certiorari is unreported. The opinion of the Circuit Court of Appeals is reported at 306 F 2d 144.

QUESTIONS PRESENTED

WHETHER PENALTIES UNDER 46 USC 596 CAN BE AWARDED FOR A FAILURE TO PAY WAGES ACCRUING TO A SEAMAN AFTER THE SEAMAN'S DISCHARGE FROM THE VESSEL.

FACTS

The libellant, a 62-year-old Greek seaman, signed written articles in Hamburg, Germany, on August 22, 1956 to serve as a fireman on board the S/S MATADOR.

Libellant served on the MATADOR for 29 days, being discharged at Norfolk, Virginia on September 18, 1956 for admission to the U. S. Public Health Service Hospital at Norfolk.

Libellant remained an in-patient at the aforesaid hospital until November 2, 1956 on which date he was discharged for repatriation to his native Greece.

On November 20, 1956, upon libellant's return to Greece he was paid the sum of $100.80, as sickness wages.

The District Court found the libellant was entitled to certain wages under the Panamanian labor code while an in-patient and following his discharge from the vessel MATADOR. For failing to pay these wages the District Court assessed penalties against the vessel owner. Authority for assessing such penalties against the shipowner was given as 46 USCA 596. This action of the District Court was affirmed by the Court of Appeals. These penalties were not assessed

as to any wages earned while on the vessel but applied only to wage accruing while the libellant was hospitalized.

ARGUMENT

The District Judge in this case awarded the seaman waiting time or "penalties" under 46 USCA 596 for the ship owner's failure to pay the seaman certain wages accruing to him under Panamanian Law *following* his discharge from the vessel MATADOR and accruing while he was an in-patient at the U.S.P.H.S. Hospital at Norfolk. The opinion of both courts clearly indicates that the penalties are awarded for respondent's failure to pay wages accruing after the libellant's discharge from the vessel.

The Court of Appeals affirmed the District Judge's actions in this regard.

However, no reference is made in the Court of Appeal's opinion to 46 USCA 596 which must govern any such award of penalties. 46 USCA 596 is specific in its wording. It refers *only* to wages due the seaman at the time of the discharge of the vessel's cargo or wages due the seaman at the time he is discharged from the vessel.

The decision of the Court of Appeals, in this regard, is in direct conflict with the very wording of 46 USCA 596, which reads as follows:

> *Time for payment*
>
> The master or owner of any vessel making coasting voyages shall pay to every seaman his

wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this action shall not apply to masters or owners of any vessel the seaman of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts.

The wages awarded the seaman in this case under Section 134 of the Labor Code of Panama are analogous to sick wages or wages to the end of the voyage, i.e., they are wages accruing after the seaman's discharge from the vessel. As to such wages, penalties *cannot* attach under 46 USCA 596.

The decision of the Circuit Court of Appeals for the Fourth Circuit, in awarding penalties for wages accruing after discharge is in direct conflict with the decision of the Ninth Circuit Court of Appeals in the

case of *Page v. United States, et al.* 177 F2d 601. In the *Page case supra.*, the Court said at page 602:

> "The statutory requirement to prompt payment arises on discharge of the seaman or discharge of the cargo, whichever first occurs. In the present case discharge of the seaman occurred first and the requirement was met by prompt payment of earned wages in Japan. *Failure to pay promptly subsequently accrued wages at the conclusion of the ship's voyage would not justify exaction of double wages.*" (Italics added for emphasis).

In the case at bar, the earned wages were not withheld without cause. The record shows that the seaman was paid his earned wages, i.e., wages due him at the time of his discharge from the vessel, upon his release from the U.S.P.H.S. Hospital at Norfolk. The Courts have held that withholding until such a time is not unreasonable and does not constitute a violation within the meaning and purview of the statute, *Blanco v. S/S FENIX* (E.D. Va., 1961) (unreported). And the District Judge, though he did not so specifically state in this case, so held. It is to the wages accruing after the seaman's discharge from the vessel that the District Court in this case has ascribed a wrongful withholding. It is to these subsequently accruing wages—wages accruing after discharge from the vessel—that the District Court has held were wrongfully withheld and to which withholding it has ruled the statute is applicable.

And in this regard see also the lucid opinion of District Judge Roche in *Yoffe v. Colman*, 23 F. Supp. 629 where this very point is discussed in considerable detail.

And in applying the penalty provision of 46USC 596 to the shipowner's failure to promptly pay wages accruing after the seaman's discharge from the vessel, the District Court and the Court of Appeals were clearly in error.

CONCLUSION

The cross-petition for certiorari of Motor Shipping Corporation of the Seven Seas should be granted for the following reasons: (1) 46 USCA 596 applies only to wages due a seaman at the time of the discharge of the vessel's cargo or wages due the seaman at the time he is discharged from the vessel, not to wages accruing to a seaman after his discharge from a vessel and (2) the decision of the Circuit Court of Appeals for the Fourth Circuit in awarding penalties under 46 USCA 596 for failure to pay wages accruing to a seaman following his discharge from a vessel is in direct conflict with the decision of the Ninth Circuit Court of Appeals in *Page v. United States, et al.* 177 F2d 601.

Respectfully submitted,

WALTER B. MARTIN, JR.